



**SRAP**  
Socially Responsible  
Agriculture Project

## Guide to Confronting Concentrated Animal Feeding Operations in

# DELAWARE



# Guide to Confronting Concentrated Animal Feeding Operations in DELAWARE

**A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT  
WITH THE ASSISTANCE OF MIDWEST ENVIRONMENTAL ADVOCATES, INC.<sup>1</sup>**

For more than 20 years, Socially Responsible Agriculture Project (SRAP) has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations and to advocate for a food system built on regenerative practices, justice, democracy, and resilience. Our team includes technical experts, independent family farmers, and rural residents who have faced the threats of factory farms in their communities. When asked for help, SRAP offers free support, providing communities with the knowledge and skills to protect their right to clean water, air, and soil and to a healthy, just, and vibrant future. For more information, visit [www.srapproject.org](http://www.srapproject.org).

## **SRAP HELP HOTLINE**

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(503) 362-8303

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<sup>1</sup> Midwest Environmental Advocates is a nonprofit environmental law center that works for healthy water, air, land, and government for this generation and the next. For more information, visit [midwestadvocates.org](http://midwestadvocates.org).





# CAFO Guide Overview

This guide outlines CAFO laws, regulatory processes, and useful resources for advocates. Below is an overview of actions communities can take if a CAFO is being built, expanding, or violating regulations.

## EDUCATE YOURSELF

Learn how CAFOs harm communities at [sraproject.org](https://sraproject.org). Use this guide to find state agencies that regulate CAFOs; state permitting requirements for zoning, construction, etc.; and public open meetings and records laws. Use SRAP's Federal Guide to learn relevant federal laws like the Clean Water Act, Clean Air Act, and Endangered Species Act.

## LOOK FOR PUBLIC NOTICES

Look for public notices of CAFOs in newspapers, state agency websites, and at government buildings. The window for public participation is often brief. Find rules and deadlines for public comment, hearing requests, and appeals. Respond before deadlines.

## REQUEST AND REVIEW PUBLIC RECORDS

Search for public records related to the CAFO; if necessary, make a public records request.

## NEW OR EXPANDING CAFOS

### REVIEW ZONING ORDINANCES

Review municipal or county codes and zoning ordinances to determine if any requirements must be met at the local level.

### REVIEW PERMIT APPLICATIONS

Determine if any local, state, or federal permit applications are required; review application materials to make sure all requirements are met.

### COLLECT DATA

Test water before the CAFO siting or expansion to establish a baseline. This may show that new pollution came from the CAFO.

## EXISTING CAFOS

### REVIEW CAFO DOCUMENTS

Review permits, applications, manure management plans, nutrient management plans, monitoring reports, etc. Familiarize yourself with permit and plan provisions so you can spot violations.

### COLLECT DATA

Conduct well, soil, water, and/or air testing to establish a connection between the facility and harmful pollution. Keep a log of odor and other impacts.

### MONITOR CAFOS AND BUILD A RECORD

Submit complaints to regulators if you observe violations. Take photos and keep a log. Don't trespass!

### FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

Did the agency take action? If a state agency isn't complying with state or federal environmental laws, contact your U.S. EPA Regional Office.

### ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

Consider forming a nonprofit if you plan long-term advocacy.

### SEEK LEGAL ADVICE

Consider contacting law firms or pro-bono clinics for help with legal matters related to CAFOs.

### IDENTIFY IMPAIRED WATER BODIES

Determine if impaired waters may be impacted by discharge from the existing or proposed CAFO.

### CONTACT STATE OR LOCAL HEALTH DEPARTMENT

The Health Department may monitor or oppose the CAFO due to public health impacts.

### CHECK FOR PUBLIC FINANCING

If the CAFO received government-backed loans, see if an Environmental Assessment was conducted.

### TRACK PUBLIC NOTICES

CAFO permits come up for renewal, so look for public notices and comment opportunities.

### REVIEW STATE RIGHT-TO-FARM LAW

Find exceptions to the law's nuisance liability shield (e.g., compliance with laws and permits is often a prerequisite to nuisance claim protection).

### AGENCIES & STATE DEFINITIONS

Familiarize yourself with your state's livestock operation definitions, and with the agencies that regulate the industry. (Definitions and relevant agencies vary by state.)

### SEEK PROPERTY TAX ADJUSTMENT

Neighbors may be able to reduce their property taxes due to CAFOs' negative impact on property values.

### ENGAGE IN RULEMAKING PROCESSES

Attend regulatory meetings and share your concerns. If your state allows it, develop local ordinances to protect communities.

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## INTRODUCTION: CAFOs IN DELAWARE

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Animal agriculture in Delaware is dominated by the poultry industry. Based on 2017 U.S. Department of Agriculture data, the state is home 2,500 farm operations that house approximately 260 million broiler chickens, 17,000 cattle, and 6,000 hogs.<sup>2</sup> Around 1/3 of the state's acreage consists of farming operations. It is the second smallest state in the U.S.,<sup>3</sup> yet ranks 19<sup>th</sup> in poultry production nationwide and 11<sup>th</sup> for broilers specifically.<sup>4</sup> The sizable animal agriculture industry functioning on relatively limited land area presents a number of issues for this small coastal state, which also relies heavily on tourism as one of its top industries.<sup>5</sup> While agriculture is an important industry in the state, it is imperative that farms comply with local ordinances, and state and federal laws to protect the environment, animals, and people from the harmful consequences of contemporary large-scale agricultural practices.

Animal feeding operations pose numerous risks to water, air, and soil quality, local ecosystems, worker, and public health. These risks are a result of the vast amounts of animal waste, air pollution, odors, and wastewater generated by these facilities, and the logistical difficulties of responsibly disposing of so much waste in a relatively small geographic area. One CAFO can produce as much waste as a large U.S. city. However, unlike human waste, which is subject to thorough treatment and processing to remove chemical and biological contaminants, animal waste is largely untreated and is then spread onto land where it can easily seep into groundwater and local surface waters. In addition to the waste disposal issues, industrial poultry operations are particularly problematic for their impact on air quality. They emit large amounts of ammonia and particulate matter or dust. This impacts public health as well as environmental health. People living near these operations have higher rates of asthma and respiratory issues and a greater risk of exposure to antibiotic-resistant bacteria. Ammonia air pollution and other sources of nitrogen

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<sup>2</sup> 2017 State Agriculture Overview, UNITED STATES DEPARTMENT OF AGRICULTURE NATIONAL AGRICULTURAL STATISTICS SERVICE, [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=DELAWARE](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=DELAWARE).

<sup>3</sup> The state, consisting of only 3 counties, is 96 miles long and anywhere from 9 to 35 miles across. It is the second smallest state, only slightly larger than Rhode Island.

<sup>4</sup> *Id.*

<sup>5</sup> Tourism, Delaware Economic Development Office, <http://dedo.delaware.gov/Industries/Tourism>. ("Tourism is Delaware's fourth largest private employment sector, a contributor of \$3 billion annually to its GDP and draws eight million people a year to the state.") \*as of the article's publication date, it was \$3B according to DEDO

from large-scale agriculture are responsible for a portion of the algae blooms and dead zones in the Chesapeake Bay.<sup>6</sup>

Development, compliance, and enforcement of local, state, and federal laws seeking to regulate CAFOs in the state is particularly important given Delaware's size, geography, density, and tourism-reliant economy. Delaware is the 2<sup>nd</sup> smallest state in the U.S., consisting of only 3 counties and measuring around 96 miles long and 9 to 35 miles across. Despite its small size, it is the 6<sup>th</sup> most densely populated state in the nation but has no large cities. Delaware's residents—an average of 442 people per square mile—are spread out across the relatively flat, low-elevation coastal state where tourism generates approximately \$3 billion dollars annually. In short, there is a significant animal agriculture industry in the state, creating a significant amount of waste and air pollution in a densely-populated state where the impacts of the operations will likely create issues for neighbors and the state's environment, and where a decline in environmental quality could impact one of its most valuable industries. While Delaware is renowned for its clean beaches along the ocean coast, a significant portion of the state's waters are degraded and people are cautioned against swimming in or consuming fish from these water bodies.<sup>7</sup> Few tourists will want to travel to the state's towns and beaches with polluted waters, particulate haze, and the odor of agricultural waste in the air. As a result, Delaware has enacted laws and regulations to promote environmental quality while still protecting the state's considerable agricultural industry, but there is room for improvement and enforcement.

As a result, it's essential to get involved and participate in the process by requesting public hearings, voicing concerns, and reporting permit violations. Delaware appears to be trying to address some of the environmental issues associated with CAFOs but it's a work in progress and local advocates will play a critical role in its improvement.

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<sup>6</sup> Chesapeake Bay TMDL, UNITED STATE ENVIRONMENTAL PROTECTION AGENCY, (2010), page 4-33.

<sup>7</sup> Jeff Montgomery and Molly Murray, *Delaware's Dirty Water*, DELAWARE ONLINE, (17 Aug, 2014), <http://www.delawareonline.com/story/tech/science/environment/2014/02/28/sunday-preview-delawares-dirty-water/5903237/>.

## **Defining CAFOs**

### **Animal Feeding Operation (AFO)**

An AFO is a facility where animals are fed and confined for at least 45 days in a year and the facility does not grow crops or forage where the animals are confined.<sup>8</sup> So this could apply to a handful of animals kept in a small barn, outbuilding, or hobby farm for 45 days or more. Being an AFO alone does not prompt state regulation, but it is a necessary component of CAFO designations.

Note that Delaware regulations state that “two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals in an operation, if the production areas adjoin each other or if the AFOs use a common area or system for the disposal of wastes.”<sup>9</sup> This could apply to an operation with adjoining buildings containing different types of animals, or, as is more likely in Delaware, a poultry operation with multiple facilities—both operations would be a single AFO in Delaware.

### **Concentrated Feeding Operation (CAFO)**

An AFO may also be a CAFO based on the number of animals housed by the facility and their waste discharge practices. The table below outlines the animal type, number, and manure system which distinguishes between large and medium CAFOs

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<sup>8</sup> 7 Del. Admin. Code, §7201- 2.1

<sup>9</sup> 7 Del. Admin. Code §7201-3.1.2.



## Large CAFO

Delaware regulations classify an operation as a large CAFO if it has equal to or greater than the number of animals in the chart below.<sup>10</sup>

1,000	Cattle other than mature dairy cows or veal calves. Includes but is not limited to heifers, steers, bulls, and cow/calf pairs.
700	mature dairy cattle (whether milked or dry cows),
2,500	swine each weighing over 55 pounds,
10,000	swine weighing under 55 pounds,
500	horses,
10,000	sheep or lambs,
55,000	turkeys,
30,000	laying hens or broilers, if the AFO uses a liquid manure handling system,
125,000	chickens except laying hens (if other than a liquid manure handling system),
82,000	laying hens (if other than a liquid manure handling system),
1,000	veal calves.
30,000	ducks (if the AFO uses other than a liquid manure handling system),
5,000	ducks (if the AFO uses a liquid manure handling system).

## Medium CAFO

Delaware regulations classify an operation as a medium CAFO if it:

Has the range of animals listed in the chart below, AND

1. Pollutants originating from the CAFO are discharged, directly or indirectly, into waters of the State; OR
2. Pollutants are discharged directly into waters of the State which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.<sup>11</sup>

300 to 999	Cattle other than mature dairy cows or veal calves. Includes but is not limited to heifers, steers, bulls, and cow/calf pairs.
200 to 699	mature dairy cattle (whether milked or dry cows),
750 to 2,499	swine each weighing over 55 pounds,
3,000 to 9,999	swine weighing under 55 pounds,
150 to 499	horses,
3,000 to 9,999	sheep or lambs,
16,500 to 54,999	turkeys,
9,000 to 29,999	laying hens or broilers, if the AFO uses a liquid manure handling system,
37,500 to 124,999	chickens except laying hens (if other than a liquid manure handling system),
25,000 to 81,999	laying hens (if other than a liquid manure handling system),
300-999	veal calves.
10,000 to 29,999	ducks (if the AFO uses other than a liquid manure handling system),
1,500 to 4,999	ducks (if the AFO uses a liquid manure handling system).

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<sup>10</sup> Id.

<sup>11</sup> Delaware Administrative Code, Title 7, §7201-9.5.3.1.2.



### **Who Decides if it's a CAFO?**

The Secretary of the Delaware Department of Natural Resources and Environmental Control is authorized to designate a CAFO, following a Department on-site inspection, if they determine that the AFO is a significant contributor of pollutants to waters of the state. The AFO is informed of its CAFO designation in writing by the Secretary. The Secretary may make this determination based on the following factors:<sup>12</sup>

- Size of the AFO
- Amount of pollutants reaching waters of the State
- The location of the AFO relative to waters of the State
- The means of conveyance of pollutants into waters of the State
- Slope, vegetation, and other factors that affect the likelihood or frequency of discharge
- Other factors that the Secretary determines are relevant to a CAFO designation

An AFO with animal numbers below those stated in the medium CAFO table above shall not be designated as a CAFO unless:

1. Pollutants are discharged into waters of the State by a manmade ditch, flushing system, manmade device, OR
2. Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.<sup>13</sup>

So even a small AFO may be designated a CAFO based on their discharges and resulting impacts upon waters of the State.

### **Responsible Regulatory Agencies**

State agencies play an important role in CAFO operation, oversight, information-gathering, education, permitting, zoning, public participation, and enforcement. The following state agencies regulate or have the potential to influence CAFO operations in Delaware.

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<sup>12</sup> Delaware Administrative Code, Title 7, §7201-9.5.3.2.1.

<sup>13</sup> 7 Delaware Administrative Code §7201-9.5.3.2.1.

## State Environmental Agency

### Delaware Department of Natural Resources and Environmental Control

The Delaware Department of Natural Resources and Environmental Control (DNREC) seeks to “to engage all stakeholders to ensure the wise management, conservation and enhancement of the State’s natural resources; protect public health and the environment; provide quality outdoor recreation; improve the quality of life; lead energy policy and climate preparedness; and educate the public on historic, cultural and natural resource use, requirements and issues.”<sup>14</sup> The U.S. EPA delegated authority to DNREC to carry out the NPDES program and DNREC has the authority to require permits for activities that result in a discharge into state surface or groundwater. In practice, DNREC considers NPDES permits in two steps: 1) an approval to site a CAFO; and 2) a CAFO facility construction permit. However, DNREC is not the sole or primary contact for implementing and enforcing the state’s CAFO Permit Program; they coordinate with and rely heavily on the Delaware Department of Agriculture to carry out the NPDES CAFO program. While DNREC oversees and advises on the CAFO Permit Program, the Delaware Department of Agriculture is the main facilitator and initial point of contact for communities regarding the CAFO permit process.

## State Agricultural Agency

### Delaware Department of Agriculture

The Delaware Department of Agriculture (DDA) seeks to “sustain and promote the viability of food, fiber, and agricultural industries in Delaware through quality services that protect and enhance the environment, health, and welfare of the general public.”<sup>15</sup> DDA is a major player in the state CAFO permit program and nutrient management.

DDA is the initial point of contact for the state CAFO permit program and oversees nutrient management—regulating activities involving the application of manure and establishing a nutrient management planning program, a certification program that encourages best management practices.<sup>16</sup> They also receive and review CAFO permit Notices of Intent, develop individual permits, require and review Nutrient Management Plans for CAFOs seeking a permit, make recommendations to DNREC

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<sup>14</sup> About DNREC, DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, <http://www.dnrec.delaware.gov/Pages/AboutAgency.aspx>.

<sup>15</sup> Mission, DEPARTMENT OF AGRICULTURE, <https://agriculture.delaware.gov/mission/>.

<sup>16</sup> 7 Del. Code §2201.

about permit coverage, assist DNREC in the issuance of final permits, conduct the public notice and participation process, draft responses to public comments, and perform inspections.<sup>17</sup>

## **Department of Health**

### **Department of Health**

The Delaware Department of Health is a possible resource for communities concerned about the adverse human health impacts of CAFOs. The Department collects health-related data and monitors drinking water. While they do not regulate agriculture, they may provide information and may weigh in on urgent public health matters.

## **Local Conservation Districts**

### **Delaware Conservation Districts**

Conservation districts in Delaware are charged with conservation, protection, development, and utilization of land and water resources in the state, and to protect and promote the health, safety, and general welfare of the people of Delaware.<sup>18</sup> They are a governmental subdivision of the state but are subject to DNREC. There are three conservation districts in Delaware: New Castle, Kent, and Sussex. They cooperate with USDA Natural Resources Conservation Service and DNREC to provide nutrient management planning and funding programs for animal operations. They do not regulate CAFOs and often facilitate agricultural development, but they can be a worthwhile point of contact for information about the natural resources in your conservation district and the types of projects they work on.

## **U.S. EPA Region 3**

Delaware is part of the U.S. EPA Region 3, which also includes Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia. While a considerable amount of CAFO regulation happens at the state level, the U.S. EPA has oversight authority; contact its regional office if the state is not performing its duties or is failing to regulate CAFOs under the applicable federal and state laws.

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<sup>17</sup> Memorandum of Agreement Between Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control (Dec 16, 2010), available at [https://agriculture.delaware.gov/wp-content/uploads/sites/108/2017/12/CAFO\\_MOA\\_Rev.pdf](https://agriculture.delaware.gov/wp-content/uploads/sites/108/2017/12/CAFO_MOA_Rev.pdf).

<sup>18</sup> 7 Del. Code §3901.

U.S. EPA Region 3 Headquarters Address:  
U.S. EPA Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

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## STATE & LOCAL GOVERNMENT: DILLON'S RULE VS. HOME RULE

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### What is Home Rule?

Home Rule is the state delegation of power to local governments to govern themselves. A Home Rule state delegates authority to local governments to govern themselves. Home Rule allows local governments to exercise considerable autonomy and reduces the need for state involvement in local affairs.<sup>19</sup>

### What is Dillon's Rule?

Dillon's Rule is the rule that local government has authority to regulate an activity only if it has been explicitly sanctioned to do so by the state government. The state constitution or code may grant varying degrees of power to the local governments. However, the local government may only exercise powers explicitly granted or implied by the state, and if there is reasonable doubt as to whether the state granted the authority to the local government, then the power was not conferred.<sup>20</sup> Overall, Dillon's Rule provides relatively narrow authority to local governments by states.

### Which Rule Does Delaware Follow and Why Does it Matter?

Delaware mostly follows Dillon's Rule. This means that unless a power is explicitly granted to the local government, the state government is the primary authority for most matters in the state. Therefore, local governments may be limited in their ability to govern issues that appear to be local matters, and residents may have to look to the state government for answers or action. However, Delaware Code allows municipalities with more than 1,000 residents to amend their charters to allow for limited home rule powers, but few municipalities have actually done so.<sup>21</sup> A municipality may also enact an ordinance, in accordance with the types of ordinances they are authorized to enact under state law, that is more stringent than the state law. The Delaware Code states that if there is a conflict between state laws

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<sup>19</sup> Local Government Authority. National League of Cities. <http://www.nlc.org/local-government-authority>.

<sup>20</sup> *Id.*

<sup>21</sup> 22 Delaware Code §802.



and local ordinances in a few select matters—size of yards, height of building, percentage of lot unoccupied, or “other higher standards than are required”—then the law, statute, regulation, or ordinance with the higher standards will govern.<sup>22</sup> This gives local governments some authority to go beyond state minimums, but only in areas they’ve been granted authority by state law—and since state law does not appear to give local government any authority over CAFOs, it is certainly limited.

Additionally, Delaware explicitly prohibits counties from enacting zoning ordinances that apply to lands or buildings used for agriculture.<sup>23</sup> This lack of local control over CAFOs can be frustrating to residents seeking to enact local or zoning ordinances intended to protect communities. Local governments in other states with Home Rule or local control have passed some of the following types of ordinances: a moratorium on new CAFO siting and development; increased setbacks from residents, public spaces, wells, or surface waters; and health ordinances giving local authorities the ability to approve or deny an incoming operation based on its impact on public health in the region. Unfortunately, as it stands, local governments in Delaware have limited authority. Therefore, if you want increased protections, you must either push for local control or pressure the state to enact regulations that serve its residents.

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## ZONING & LAND USE

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### Zoning

Zoning ordinances are established and enforced by your municipality, township, or your county. Zoning ordinances vary in how protective they are of agricultural, residential, or business interests. They specify areas where, and under what conditions, certain activities and development can take place. Engagement in the zoning process can impede new CAFOs looking to come into a community or existing CAFOs seeking to expand. Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in a particular community. It is crucial to know your local elected officials and to establish a working relationship with them to facilitate a more efficient exchange of information and knowledge.

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<sup>22</sup> 22 Delaware Code §307.

<sup>23</sup> 9 Delaware Code §2601.

See your municipal or county zoning website to research applicable zoning rules and explore if its actions are consistent with the region's comprehensive plan, discussed below.

### **Comprehensive Plans**

Counties, townships, or municipalities that enact zoning regulations must first create and adopt a comprehensive plan which details how they would like the region to develop and to serve as the basis for zoning. It sets out a roadmap of goals and creates policies on "public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents."<sup>24</sup> Comprehensive plans should be reviewed or updated every five years and readopted every ten years. These plans provide a framework for addressing land use decisions, balancing competing interests to minimize nuisance conflicts, protecting natural resources, providing a basis for decisions if challenged, and giving residents an opportunity to weigh in and participate in its development.

In some states comprehensive plans are optional, but in Delaware, municipal governments that enact zoning regulations are required to have a comprehensive plan. Small towns and cities with less than 2,000 people do not have to develop a comprehensive plan but they must adopt a municipal development strategy. The Delaware code requires any incorporated municipality to prepare a comprehensive plan to "encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development and infrastructure investment actions with those of other municipalities, counties and the State through a process of municipal comprehensive planning."<sup>25</sup> See Title 22, Section 702 for the various requirements of comprehensive plans in Delaware.

These plans do little to regulate CAFO development and expansion. However, the purpose of comprehensive plans is to "promote the health, safety, prosperity and general public welfare of the jurisdiction's residents,"<sup>26</sup> and some would argue that a

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<sup>24</sup> 22 Delaware Code §702(b).

<sup>25</sup> 22 Delaware Code §702(a).

<sup>26</sup> 22 Delaware Code §702(b).

zoning decision to site CAFOs would contradict the intent of their county or municipal comprehensive plan.

For the code regarding your county's comprehensive plan, see the following:

**New Castle County:** Delaware Code, Title 9, Chapter 26

**Kent County:** Delaware Code, Title 9, Chapter 49

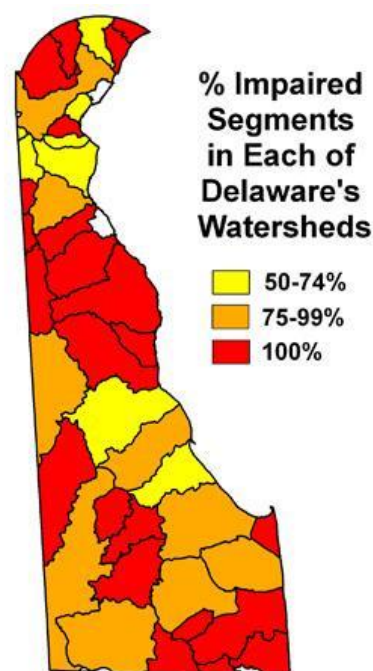
**Sussex County:** Delaware Code, Title 9, Chapter 69

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## WATER

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Large-scale animal agriculture has a significant impact on surface and groundwater quality across the nation, and particularly in Delaware, where so much of the state's industry is fueled by coastal tourism. Agriculture is the single largest source of nutrient and sediment pollution in the Chesapeake Bay and most of the state's impaired waters—responsible for approximately 42% of nitrogen, 55% of phosphorous, and 60% of sediment entering the bay.<sup>27</sup> Livestock manure and poultry litter account for approximately half of those figures.<sup>28</sup> The excess nutrients fuel eutrophication and toxic algae blooms. Given the large poultry industry in such a small state, it should not come as a surprise that Delaware struggles with water quality. According to the most recent water quality assessment, more than 90% of Delaware's waterways are considered impaired or "polluted."<sup>29</sup>



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<sup>27</sup> 2017 and 2025 Watershed Implementation Plans (WIPs), Chesapeake Progress, <https://www.chesapeakeprogress.com/clean-water/watershed-implementation-plans>.

<sup>28</sup> Guidance for Federal Land Management in the Chesapeake Bay Watershed: Chapter2. Agriculture; U.S. ENVIRONMENTAL PROTECTION AGENCY, [https://www.epa.gov/sites/production/files/2015-10/documents/chesbay\\_chap02.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/chesbay_chap02.pdf).

<sup>29</sup> Watershed Assessment Section: 305(b) and 303(d) Reports, Delaware Department of Natural Resource and Environmental Control, <https://dnrec.alpha.delaware.gov/watershed-stewardship/assessment/>.

The federal Clean Water Act (CWA) regulates the discharge of pollutants into waters of the United States and sets water quality standards for surface waters.<sup>30</sup> The CWA also requires the development of Total Maximum Daily Loads (TMDL) for impaired waters and the National Pollutant Discharge Elimination System (NPDES) permit to control discharges into surface waters. The CWA also authorizes the U.S. EPA to delegate the implementation of the CWA to the states—provided they're willing to take on the task. Delaware is one of the 46 states authorized to implement the NPDES program. This section will discuss Delaware's implementation of NPDES, TMDLs, water quality standards, wetlands, and other state laws pertaining to water that may relate to animal agriculture operations. Most of Delaware's CAFOs regulations regarding water pollution can be found in 7 Del. Admin. Code §7201-9.5.

## **Delaware Pollutant Discharge Elimination System Program**

### **CAFO NPDES Permit**

The Delaware Department of Natural Resources and Environmental Control (DNREC) and the Delaware Department of Agriculture (DDA) are both involved in the state's CAFO NPDES program. DNREC issues the permit but DDA handles almost every other aspect of the program—the review of permit applications, document collection and review, inspections, Nutrient Management Plans, Animal Waste Management Plans, and correspondence with applicants. Delaware recently developed two different NPDES CAFO permits: one for facilities that land apply manure, and another for facilities that will not land apply manure. U.S. EPA's NPDES CAFO Permitting status report for 2017 shows that Delaware has 514 CAFOs and 132 have NPDES permits.<sup>31</sup>

For a detailed look at the permit requirements, see the Delaware's General Permit for CAFO NPDES [permit with land application of manure](#)<sup>32</sup> and [without application of manure](#).<sup>33</sup>

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<sup>30</sup> 33 U.S.C. § 1251 *et seq.*

<sup>31</sup> NPDES CAFO Permitting Status Report, U.S. ENVIRONMENTAL PROTECTION AGENCY, [https://www.epa.gov/sites/production/files/2018-05/documents/tracksum\\_endyear\\_2017.pdf](https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf).

<sup>32</sup> Permit Number DE 5000N/12, General Permit Authorization for CAFOs to Discharge under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware—Facilities with Land Application of Manure, <https://documents.dnrec.delaware.gov/wr/information/SWDInfo/Documents/2019.04.30%20CAFO%20GP%20Permit.pdf>.

<sup>33</sup> Permit Number DE 5000N/11, General Permit Authorization for CAFOs to Discharge under the National Pollutant Discharge Elimination System and the Laws of the State of Delaware—Manure Generation



CAFO owners applying for a NPDES CAFO permit must submit a [Notice of Intent](#) (NOI) at least 180 days before starting operations.<sup>34</sup> If an AFO expands and becomes a CAFO as a result of the expansion, they must submit an NOI within 90 days of becoming a CAFO. The NOI must include a Nutrient Management Plan or an Animal Waste Management Plan as well as the following information: trade name of the CAFO, type of business, name of the owner/operator, mailing address for the owner/operator, description of the CAFO location, animal type(s), number of animals confined, estimated manure, litter, and process wastewater generation by type per year, manure storage capacity, manure storage system, estimated amount of manure transported off-site, animal mortality system, process wastewater system generated, where applicable, and total number of acres for land application that are under the CAFO's control.<sup>35</sup>

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Facilities Only,

<https://documents.dnrec.delaware.gov/wr/Information/SWDInfo/Documents/CAFO%20Permit.pdf>.

<sup>34</sup> Delaware CAFO Notice of Intent & Application for Coverage, Delaware Department of Agriculture and Delaware Department of Natural Resources and Environmental Control,

<https://agriculture.delaware.gov/wp-content/uploads/sites/108/2019/02/NOI-CAFO-Permits.pdf>.

<sup>35</sup> 7 Del. Admin. Code. §7201-9.5.4.4.

## Nutrient Management Program

Delaware's Nutrient Management Program is intended "to regulate those activities involving the generation and application of nutrients in order to help improve and maintain the quality of Delaware's ground and surface waters and to meet or exceed federally mandated water quality standards, in the interest of the overall public welfare...and to formulate a systematic and economically viable nutrient management program that will both maintain agricultural profitability and improve water quality in Delaware."<sup>36</sup> See Delaware Code Title 3, Chapter 22. The program has four primary features: nutrient certification and continuing education requirements, nutrient management planning, record keeping of all nutrient-related activities, and annual reporting to the Nutrient Management Commission. A CAFO must submit a Nutrient Management Plan (NMP) with its NOI, but aspects of Delaware's Nutrient Management Program apply to smaller operations as well. For example, all AFOs that maintain more than eight animal units or apply nutrients to at least 10 acres of land require nutrient generator certifications.<sup>37</sup> See Figure 2 for applicability and what certification entails.

Figure 2 Nutrient Management Law



The requirements for a permitted CAFO's Nutrient Management Plan (NMP) or Animal Waste Management Plan (AWMP) are outlined in 7 Del. Admin. Code §7201-9.5.5.1. It's complicated, so consider reading it in full, but here are a few highlights:

The NMP must be written by a certified nutrient consultant in accordance with State Technical Standards and must include:

- Field maps or aerial photographs that include a soil survey map, the location of all surface waters, and irrigation systems.
- An estimate of annual manure and litter generation and storage methods.
- Soil test results using State Technical Standards protocols.

<sup>36</sup> 3 Del. Code §2201.

<sup>37</sup> 3 Delaware Code §2241.

- The rate of application of nitrogen and phosphorus.
- The crops to be planted in each field and realistic yield goals.
- The form and source of manure, litter, and process wastewater to be land applied, and the timing and method of land application.
- Consideration of multi-year phosphorus application.
- Volatilization of nitrogen and mineralization of organic nitrogen.
- Description of minimum best management practices (BMPs) in place and to be implemented.
- A description of manure storage capacity and general schedule or timeframe when manure is removed or transported.
- Management practices to prevent manure storage, collection, and conveyance systems from leaking pollutants to waters of the State.
- Diverting water from contacting waste.
- Liquid storage systems to include the volume of water generated and collected by a 25-year, 24-hour rainfall event.
- A detailed animal mortality plan acknowledging that burial of dead animals is prohibited.
- Manure, litter, and process wastewater may not be applied closer than 100 feet to any down-gradient surface waters, open tile intakes structures, sinkholes, agricultural well heads or other conduits to surface water unless there is a 35-foot vegetated buffer or a 10-foot vegetated buffer and a winter crop is planted.

For more detail see the [State Technical Standards](#).

### **Wetlands**

Wetlands are a critically important resource that require strong protections from federal and state government. Wetlands influence groundwater discharge rates, assist with stormwater, and flood control, filter pollutants and nutrients from the water, reduce erosion, and provide critical habitat for numerous plant and animal species. Various federal and state laws are designed to protect wetlands' see the Federal Guide for more information.

Delaware's Wetlands Act acknowledges that "much of the wetlands of this State have been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of the state are in jeopardy..."<sup>38</sup> Therefore, any activity in the wetlands requires a permit from the Department of Natural

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<sup>38</sup> 7 Del. Code §6602.

Resources and Environmental Control.<sup>39</sup> If the Secretary of DNREC receives a permit application for activity on wetlands, the Secretary will advertise the proposed activity in “a daily newspaper of statewide circulation and in a newspaper of general circulation in the county in which the activity is proposed.”<sup>40</sup> The Secretary may hold a public hearing if the Secretary receives a “meritorious objection” within 20 days of the public notice.

Therefore, if a new or existing AFO is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they have not, submit a complaint to the appropriate agency. If the operation applied for a permit, submit public comments and request a public hearing. Emphasize the importance of the state’s wetlands to protect groundwater, lakes, and biodiversity in the state and beyond.

See the Federal Guide for information about 401 and 404 certification regarding wetland activities under the federal Clean Water Act.

### **Water Quality**

As noted above, Delaware continues to struggle with water quality. The state largely mirrors water quality protection required under federal rules, but the main deviation is Delaware’s heavy emphasis on nutrient management. For example, Delaware regulates nutrients of facilities not covered by other permits and has more detailed setback distances than those found in federal law.<sup>41</sup>

### **Total Maximum Daily Load**

For waters that fail to meet water quality standards and appear on Delaware’s 303(d) list of impaired waters, the state must develop Total Maximum Daily Loads (TMDLs) for the pollutants contributing to the impairment. The TMDL then serves as a limit on the amount of a particular pollutant that could be discharged and still meet water quality standards. TMDLs should be set accounting for both point sources and nonpoint sources of pollution. Under federal regulations, CAFOs are treated as point sources, but storm water discharges of pollutants from land application of manure are exempt as a point source if the application is consistent with its NMP. Instead, these stormwater discharges from land application are considered nonpoint source.

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<sup>39</sup> 7 Del. Code §6604.

<sup>40</sup> 7 Del. Code §§6608–6609.

<sup>41</sup> Delaware’s surface water quality standards are codified in 7 Del. Code §7401.



Once TMDLs are calculated, the DNREC should implement plans to achieve water quality standards.

The Watershed Assessment Section of DNREC is the primary authority for TMDL development. DNREC and Tributary Action Teams develop Pollution Control Strategies (PCSs) to implement TMDL plans. Tributary Action Teams prepare PCSs with both voluntary and regulatory approaches to achieve water quality standards. The PCS development offers an opportunity to participate in the process. Tributary Action Teams hold public forums and community meetings and actively seek public input on approaches.<sup>42</sup> This is an opportunity to get involved in discussion about water quality in Delaware. Unfortunately, due to a formal memorandum of agreement between DNREC and the Delaware Nutrient Management Commission, DNREC will not place any additional restrictions for AFOs as long as the AFO is abiding by its NMP. Until that changes, AFO willingness to be subject to additional measures under the PCS would have to be voluntary and therefore seems unlikely.

Note: Delaware is also included in the multi-state Chesapeake Bay TMDLs, along with Maryland, Virginia, West Virginia, Pennsylvania, and New York overseen by U.S. EPA.<sup>43</sup>

### **Setbacks and Buffer Requirements**

Setbacks and buffer requirements serve to minimize the discharge of pollutants from animal waste application into surface and ground water. Federal law requires a 100-foot setback of manure application from surface waters, unless there is a 35-foot vegetated buffer, or other pollution control measures in place that are equivalent to or greater than a 100-foot setback. Delaware adopts these setbacks but the State Technical Standards under the Delaware's Nutrient Management Program allows even shorter setbacks based on the stance that these measures will have pollutant reductions equal or greater than a 100-foot buffer:

- For fields with high phosphorus soils: Following the crop receiving manure, litter or process wastewater, have a minimum 10-foot vegetated buffer and plant a winter cover crop in accordance with State Technical Standards.
- For fields without high phosphorus soils: Following the crop receiving manure, litter or process wastewater, have a minimum 10-foot application setback and plant a winter cover crop in accordance with State Technical Standards.

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<sup>42</sup> Pollution Control Strategy and Tributary Action Teams, Del. Dept. of Natural Resources and Environmental Control, <https://dnrec.alpha.delaware.gov/watershed-stewardship/assessment/tributary-action-teams/>.

<sup>43</sup> Chesapeake Bay TMDL, U.S. Environmental Protection Agency, <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-document>.

Delaware also provides for setbacks regarding proximity to wells and floodplains:

- Waste storage structures and animal confinement areas should not be located within 200 feet of a domestic water well or within 300 feet of a public water supply.
- Waste storage structures and animal confinement areas should not be located within a 100-year floodplain.

### **Stockpiling Manure**

In addition to compliance with Nutrient Management Plans and permit conditions, poultry operations are subject to regulation of the storage and staging of poultry litter.<sup>44</sup>

- Poultry litter can be stored, uncovered, outside of the production areas, for up to 90 days.
- It must be stacked at least six feet high in a conical cross section shape.
- It shall not consist of more than 5% crust out material.
- The staging area should be the highest and most practical site but it should not be used more than once every two years.
- They should remove all of it and the top couple inches of topsoil.
- A crop or vegetative cover should be planted over the staging site after removal.
- DDA may extend the storage period beyond 90 days if:
  - The pile is at least ten feet tall; and
  - There is a 24-foot vegetative buffer around the site.
- It should be at least 100 feet from any waterbody, drainage ditch, or public road.
- It should be at least 200 feet from domestic wells or any residence that does not belong to the poultry operator.
- It should be at least 300 feet from a public water supply.
- Outdoor stockpiling of poultry manure without a cover and within the production area or any area other than the application area cannot exceed 14 days.
- Waste should not be applied on snow-covered or frozen ground or between December 7 and February 15.

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<sup>44</sup> 3 Del. Admin. Code §1201-6.3.

Given the nature of giant poultry litter storage piles, it's relatively easy to see if an operation is not complying with these conditions.

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## CAFO INSPECTIONS, ENFORCEMENT & PENALTIES

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### CAFO Inspections

Delaware's Department of Agriculture (DDA) is the primary agency responsible for ensuring compliance with state laws and regulations that apply to AFOs. They conduct inspections to ensure compliance with permits, Nutrient Management Program, or Animal Waste Management Plan. There does not appear to be a regular inspection schedule of operations beyond the initial inspection when an operation applies for a CAFO NPDES permit and the Nutrient Management Law's requirement to submit annual implementation reports. DDA NMP staff does perform audits on facilities with NMPs and in 2016, they audited 77 AFOs. However, inspections appear to be largely complaint based. In 2016, DDA Department of Nutrient Management receive 23 informal complaints and 2 formal complaints. Of those complaints, 61% were regarding manure management, 30% were regarding odor, and 9% regarding fertilizer management.<sup>45</sup> Over half of the complaints submitted were regarding poultry operations.

### Submitting a Complaint

As you'll see in the Right to Farm Law section below, AFOs are only shielded from nuisance claims if they're in compliance with all applicable laws and regulations. If you believe that an AFO is violating its permit or nutrient management plan, bring it to the DDA's attention. It not only serves to ensure compliance with regulations intended to protect the environment and community health, but it also puts the operation on notice that its neighbors are paying attention. Also, whenever you're dealing with a particularly non-compliant facility, a history of complaints and violations provide a record of ongoing compliance issues which could be helpful in a variety of scenarios.

There is no online complaint form but you can email DDA with any complaints or questions. Find their contact information on DDA's website "[Complaints &](#)

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<sup>45</sup> Delaware Nutrient Management Commission Annual Report 2016,  
<https://agriculture.delaware.gov/wp-content/uploads/sites/108/2017/12/2016-DNM-AR.pdf>.

**Questions.**<sup>46</sup> Give as much detail as possible about the nature, date, time, and circumstances of your complaint. Include photos whenever possible.

Also see 3 Del. Code §§2244, 2260—2263 regarding Nutrient Management complaints, hearings, appeals, suspensions, modifications, or revocations.

### **Enforcement Data**

Some states make inspection and enforcement actions available on their website. Delaware DDA has a [website for enforcement actions](#), but it doesn't list many actions and doesn't include inspection records.<sup>47</sup>

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## **AIR**

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Large-scale animal agriculture is a significant source of air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, emissions and odors from animal agriculture may be regulated. They are stationary sources that emit pollutants in amounts that jeopardize the environment and public health, but the agricultural industry has largely evaded meaningful regulation. The agricultural industry points to a number of reasons why agriculture should not be regulated—such as monitoring difficulties, variable climates, data collection methods, and so on. In order to respect industry concerns while also working toward meaningful regulation to protect the air quality, the U.S. EPA has entered into agreements with animal agriculture where CAFOs monitor and collect air emissions data in exchange for immunity for violating air pollution laws. In short, federal law does not require much from CAFOs to address their impacts on air quality and public health. See the federal guide for further discussion of the federal Clean Air Act, air quality agreements, and applicable regulations.

While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions or agricultural odors. Unfortunately, Delaware has not established any air quality or odor-based regulations for animal feeding operations.

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<sup>46</sup> Complaints & Questions, Del. Department of Agriculture, <https://agriculture.delaware.gov/complaints-questions/>.

<sup>47</sup> Poultry and Animal Health Enforcement Actions, Del. Dept. of Agriculture, <https://agriculture.delaware.gov/poultry-animal-health/poultry-animal-health-enforcement-actions/>.

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## PUBLIC PARTICIPATION

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There are few opportunities for public notice and participation in Delaware's agricultural industry. The main opportunities are local government zoning approvals or conditional use decisions (see Zoning section), NPDES permit decisions, and wetland permits.

### **NPDES Permit Decisions**

Delaware Administrative Code provides for the public notice of NPDES permit applications.<sup>48</sup> It states:

"Every complete application for a NPDES permit, including any request for permit modification, revocation and reissuance or termination, shall be given public notice by publication in a newspaper of general circulation in the county, city or town in which the discharge is located and in a daily newspaper of general circulation throughout the state. Notice shall be provided when the tentative determinations have been made pursuant to §6.12 and a draft permit prepared. A copy of the notice shall be mailed to the applicant, the agencies listed in §6.31 and any person or group who have asked to be notified. The Secretary will maintain a mailing list of persons and groups who will be sent copies of notices for all NPDES applications. The Secretary will add the name of any person or group to that list upon written request."<sup>49</sup>

DNREC and DDA give notice that farms have applied for NPDES Permits on their [public notice website](#).<sup>50</sup> Copies of the NOI, AWM/NMP, and permit are available upon request. The Secretary shall provide at least 30 days following the public notice to submit written views or request a hearing. The Secretary of DNREC will issue the permit unless someone requests a public hearing, it is a "meritorious request," and the request states the nature of the operation and issues that will be raised at the hearing as well as a reasoned statement of the activity's probable impact. Despite the requirements, a public hearing can be an opportunity to rally concerned residents and communicate your concerns to both the operator and agency officials.

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<sup>48</sup> 7 Del. Admin. Code §7201-6.3.

<sup>49</sup> 7 Del. Admin. Code §7201-6.3.1.

<sup>50</sup> Public Notices, DEL. DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, <https://dnrec.alpha.delaware.gov/dnrec-public-notices/>; Delaware Nutrient Management Fact Sheet, DEL. DEPT. OF AGRICULTURE, [https://agriculture.delaware.gov/wp-content/uploads/sites/108/2017/12/CAFO\\_FactSheet\\_2017.pdf](https://agriculture.delaware.gov/wp-content/uploads/sites/108/2017/12/CAFO_FactSheet_2017.pdf).

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## RIGHT TO FARM & NUISANCE CLAIMS

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### Nuisance Claims

A nuisance is something that interferes with the right to use and enjoy real property. Noise, odors, dust, smoke, pollution, pests, illness, or light could be considered nuisances. Many individuals and communities describe CAFOs as nuisances; CAFOs can decrease local property values, prevent people from using and enjoying their homes or yards, and can contribute to health issues. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield such facilities from nuisance claims—Delaware included. Delaware has enacted legislation to protect agricultural operations from nuisance lawsuits. While legislators and operators may assert that this law is necessary to protect farmers from nuisance claims by non-farming neighbors who don't understand the sights and smells of farm life, these laws primarily protect CAFOs—not small sustainable farmers.

### State Right-to-Farm Laws

Right-to-farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities who experience the unpleasant effects of agricultural production. Delaware's Right-to-Farm Law at Title 3, Section 1401 of the Delaware Code states,

"No agricultural or forestal operation within this State which has been in operation for a period of more than 1 year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural or forestal operation is located.... In any nuisance action, public or private, against an agricultural operation or its principals or employees, including forestall activity, proof that the agricultural operation, including forestall activity, has existed for 1 year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits. If the operation is in compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with good agricultural practice. No state or local law-enforcement agency may bring a criminal or civil action against an agricultural operation for an



activity that is in compliance with all applicable state and federal laws, regulations, and permits.”<sup>51</sup>

As you can see, Delaware’s right-to-farm law is very protective of agricultural operations from nuisance claims. However, these protections are only available for compliant facilities. Therefore, it is particularly important to keep an eye on these operations, report violations, and raise concerns early if it’s a new operation.

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## HEALTH

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### [Health Investigation by the Delaware Department of Health](#)

#### **Health Data Information**

Gathering and understanding health data can be an important part of investigating CAFOs. CAFOs impact air and water quality in a way that can have harmful effects on human health. The Delaware Division of Public Health collects data and maintains reports about health data in the state. See the its [Data Information & Request Process](#) website for guidance on accessing public health information online or by requesting it from the department.

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## PUBLIC INFORMATION LAWS

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### [Freedom of Information Act](#)

The Freedom of Information Act (FOIA) is federal law that allows individuals to request information from government agencies, subject to some restrictions. See the Federal CAFO Guide for more information on FOIA.

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<sup>51</sup> 3 Del. Code §1401

### U.S. EPA Region 3

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for federal FOIA Requests. Contact information for the EPA Region 3 FOIA Officer is:

Regional Freedom of Information Officer  
U.S. EPA, Region 3  
1650 Arch Street (3CG00)  
Philadelphia, PA 19103  
(215) 814-2050

See the Federal Guide for more information on FOIA. Several EPA websites have useful summaries of the federal FOIA request process, response time guidance, and other information.<sup>52</sup> Note that you're potentially entitled to a waiver of fees if requesting information that is "likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester."<sup>53</sup> U.S. EPA will only consider waiver requests that are submitted at the same time as the corresponding federal FOIA request.<sup>54</sup>

A variety of maps, reports, and databases are also available through U.S. EPA to find information and documents about regulated facilities. For example, U.S. EPA's [MyPropertyInfo](#) database can provide information about a facility without having to file a federal FOIA request for the same records. While U.S. EPA's websites may be helpful, state or federal FOIAs will produce more records and information.

### Delaware Freedom of Information Act

The Delaware Freedom of Information Act provides the legal foundation for you to request public records from state agencies in Delaware. The Act is codified at 29 Del. Code §§10001-10007. Make sure you consult the most current version of this law since it changes frequently. Delaware's current law states:

It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such

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<sup>52</sup> FOIA Request Process, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process>.

<sup>53</sup> Fee Waivers, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process#waivers>.

<sup>54</sup> See *id.*

officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the citizens of this State, this chapter is adopted, and shall be construed.<sup>55</sup>

Public records are defined as:

[I]nformation of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.<sup>56</sup>

Although this appears to be a broad definition, the law includes a lengthy list of categories that are not considered public records. For the full list of public records exceptions, see 29 Del. Code §§10002(1)(1)–(19). For more detail about FOIAs in Delaware, see the [Delaware Freedom of Information Act Policy Manual for FOIA Coordinators](#) published by the Delaware Attorney General in 2017.<sup>57</sup>

Residents seeking information about CAFOs should attempt to submit the requests to the appropriate agencies, or in some cases, local governments. The policies and procedures for state FOIA requests for departments and agencies in Delaware can be found at Title 8 of Delaware Administrative Code. Each agency has its own set of regulations regarding state FOIA requests but some of the main points are the same:

- Put your request in writing.
- Describe your request with sufficient detail.
- The agency should respond to your request within 15 days of receiving it.
- They should explain any denials of your request and reference the applicable code.
- You may seek a fee waiver, but if it isn't granted, fees may apply.

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<sup>55</sup> 29 Delaware Code §10001.

<sup>56</sup> 29 Delaware Code §10002(1)

<sup>57</sup> Delaware Freedom of Information Act Policy Manual for FOIA Coordinators, Delaware Attorney General, (Nov 1, 2017), <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2018/04/FINAL-FOIA-POLICY-MANUAL-2017.pdf>

Each agency has different policies and points of contact for state FOIA requests. Delaware also has an online [FOIA Request Form](#) which can be sent to various agencies.<sup>58</sup> Here are a few of the agencies you might request information from when dealing with a CAFO in your community, where to submit requests, and their corresponding locations in the administrative code.

**Delaware Department of Agriculture:** 8 Del. Admin. Code §300

FOIA Coordinator  
The Delaware Department of Agriculture  
2320 South DuPont Highway Dover, DE 19901  
302.697.6287 (FAX)  
<http://dda.delaware.gov/>  
[DDA.FOIA@state.de.us](mailto:DDA.FOIA@state.de.us)

**Delaware Department of Natural Resources and Environmental Control:** 8 Del. Admin. Code §900

DNREC FOIA Coordinator  
OTS  
89 Kings Highway  
Dover, DE 19901  
(302)739-6242 (FAX)  
[www.dnrec.delaware.gov](http://www.dnrec.delaware.gov)  
[DNREC\\_FOIA\\_Request@state.de.us](mailto:DNREC_FOIA_Request@state.de.us)

**Delaware Department of Health and Social Services:** 8 Del. Admin. Code §600

FOIA Coordinator  
1901 N. Du Pont Highway  
Main Building  
New Castle, DE 19720  
(302)255-4429 (FAX)

Learn as much as possible about the operation you're concerned about—size, property value, number of employees, land records, etc. This can be general online

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<sup>58</sup> Request for Public Records: FOIA Request Form, DELAWARE.GOV, <https://delaware.gov/foia/>

research, searching the [Delaware Free Public Records Directory](#),<sup>59</sup> or researching what types of documents or records the agency makes available online. This background information may help you determine what types of records you might like to request from the agency. You can also consider going to the state agency or local government office in person to inspect and copy the requested records. A scanning wand or scanning application on your phone can be a useful and cost-effective tool in the hunt for records.

### **Open Meetings Act**

In addition to accessing public records, anyone has the right to attend meetings of a public entity. Access to public meetings is a cornerstone of open government; keep an eye on local matters and opportunities to get involved. Note that the right to attend does not necessarily mean the right to speak, but most meetings open for questions or comments toward the end. Delaware's public meeting statute is codified in 29 Del. Code §10004. See the statute for more detail, but below are the basics.

- Every meeting of all public bodies shall be open to the public
  - Unless it is closed for the one of the reasons listed in 29 Del. Code §10004(b)(1)-(9)
- They should give public notice of regular meetings at least seven days beforehand
- The notice should have an agenda, the time, date, and place of the meeting
  - The agenda may be subject to change at the meeting
  - The agenda should include any executive sessions (if applicable)
- They should give public notice of special or rescheduled meetings at least 24 hours beforehand and include an explanation why they could not give the customary 7-day notice
- Public notice includes the following:
  - Conspicuous posting at the principal office of the public body holding the meeting (If no principal office exists, at the place where their meetings are usually held)
  - Electronic posting on a designated and publicly accessible State of Delaware website
  - If the agenda is not available during the initial public notice, it should be available at least six hours before the meeting, and they should say why it was not available during at public notice

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<sup>59</sup> Delaware Free Public Records Directory, <https://www.publicrecords.onlinesearches.com/delaware>.

- Video-conferencing may be available
- They shall maintain minutes of all meetings that are available to the public
- Minutes should contain the following information:
  - Members present
  - What was voted on
  - Who voted and how they voted, including abstentions and recusals
    - All votes must be made in public view—not secret ballots and no voting in executive sessions
  - Any action agreed upon
- Meetings of the public body should be held within their jurisdiction

If you believe a public body has violated the Delaware FOIA, including the provision regarding open meetings, you “may challenge the validity under this chapter of any action of a public body by filing suit within 60 days of... learning of such action but in no event later than 6 months after the date of the action.”<sup>60</sup> The burden of proof is on the records custodian or public body to justify why they denied access to records or violated the open meeting requirements.<sup>61</sup>

Attending public meetings is one of the best ways to get involved, get to know your local and state officials, and tell them which issues matter to you. These meetings are often where zoning and permit decisions happen, and involvement of residents can have a significant impact.

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## OTHER RESOURCES

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*Protecting your community from factory farms is difficult. Avoid working alone by building relationships in your community, consulting with experts, and collaborating with groups working on similar issues.*

### **Socially Responsible Agriculture Project (SRAP)**

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at [www.sraproject.org](http://www.sraproject.org), and contact SRAP for support at 503-632-8303.<sup>62</sup>

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<sup>60</sup> 29 Delaware Code §10005.

<sup>61</sup> 29 Delaware Code §10005(c).

<sup>62</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>



## State Organizations

Dealing with an AFO in your community can feel like a lonely uphill battle. Consider contacting organizations working on these issues or other community groups in the state that have gone through similar battles. Below are a few organizations:

- [Delaware Center for the Inland Bays](#)
- [Delaware Riverkeeper Network](#)
- [Sierra Club – Delaware Chapter](#)

## State Pro-Bono Clinics

### **Wiener University Delaware Law School, Environmental & Natural Resources Law Clinic**

Delaware Law School has an Environmental & Natural Resources Clinic that helps organizations and individuals resolve legal issues, prepare public comments, and litigate case related to the protection of the environment.<sup>63</sup>

#### Widener Environmental Help Line

The Environmental and Natural Resources Law Clinic operates a help line to assist residents with legal issues—whether that’s providing guidance for them to advocate for themselves, or providing legal representation when appropriate.<sup>64</sup> You can call their toll-free help line at 1-888-953-6853.<sup>65</sup>

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<sup>63</sup> Environmental & Natural Resources Law Clinic, WIDENER UNIVERSITY DELAWARE LAW SCHOOL, <http://delawarelaw.widener.edu/prospective-students/jd-program/jd-academics/clinics/environmental-law-and-natural-resources-clinic/>.

<sup>64</sup> Widener Environmental Help Line, Widener Environmental Law Center, <http://blogs.law.widener.edu/envirolawcenter/environmental-law-clinic/widener-environmental-help-line/>.

<sup>65</sup> Id.

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## LIST OF STATUTES & REGULATIONS

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Below is a list of relevant statutes and regulations, most of which are discussed in this Guide.

### Statutes & Regulations

Regulation	Topic
7 Del. Admin. Code §3901	Conservation Districts
7 Del. Admin. Code §7201	Regulations Governing the Control of Water Pollution
7 Del. Admin. Code §7401	Surface Water Quality Standards
8 Del. Admin. Code §300	Department of Agriculture FOIA Procedures
8 Del. Admin. Code §600	Department of Health and Social Services FOIA Procedures
8 Del. Admin. Code §600	Department of Natural Resources and Environmental Control FOIA Procedures

<b>Statute</b>	<b>Topic</b>
3 Del. Code. §1401	Right to Farm Law
3 Del. Code. §2201	Nutrient Management Declaration of Purpose
3 Del. Code. §2241	Requirements for Nutrient Management Certifications
3 Del. Code. § 2244	Nutrient Management Suspension, Modification, Revocation
3 Del. Code. §§2260-2263	Nutrient Management Complaints, Hearings and Appeals
7 Del. Code. §3901	Soil and Water Conservation Districts
7 Del. Code. §6602	Wetlands Act
7 Del. Code. §6604	Wetlands Permit
7 Del. Code. §§6608-6609	Wetland Permit Application and Public Hearings
9 Del. Code. §2601	Zoning
22 Del. Code. §702	Comprehensive Development Plan
22 Del. Code. §802	Home Rule
29 Del. Code. §§10001-10007	Freedom of Information Act